**HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

**Writ Petition No.7089 of 2007**

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**Between:**

Kolla Nookaraju …Petitioner

**And**

The Authorised Officer under
Securitisation Act (Act 54 of 2002),
State Bank of India,
ADB, Narsipatnam,
Visakhapatnam District and another. ...Respondents.

**:: O R D E R ::**

Counsel for the petitioner : Sri V.V.S.N. Raju

**9th April, 2007**

**Per G.S. Singhvi, C.J.**

This is a petition for quashing order dated 24-3-2007, vide which the Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal')

directed the petitioner to pay two instalments of Rs.2,50,000/- each on or before 30-3-2007 and 10-4-2007 as a condition for continuing the ex parte interim order dated 19-10-2006.

The petitioner took term loan of Rs.25,00,000/- from the State Bank of India, ADB, Narsipatnam Branch (Visakhapatnam) (for short, 'the bank') in 2001 for setting up a hotel. He claims to have applied for sanction of additional loan to meet additional capital cost, but his request was not entertained. After five years of the disbursement of loan, the bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') for recovery of its dues. In the first instance, notice dated 18-5-2006 was issued under Section 13(2) of the Act requiring the petitioner to pay a sum of Rs.23,83,520/-. The latter submitted representation dated 6-7-2006 detailing the reasons for his inability to repay the loan and requested that his account be settled under One Time Settlement Scheme. He offered to pay an amount of Rs.18,00,000/-. The bank declined to accept the same. Subsequently, he is said to have offered to pay Rs.21,00,000/-, but the bank again declined his offer and issued notice dated 1-9-2006 under Section 13(4) of the Act for taking possession of the property comprising commercial complex and KNR Lodge constructed over an area measuring 653.40 square yards situated in Survey No.8-1A, Block-I, Ward-I, RTC Complex, Narsipatnam (Visakhapatnam).

The petitioner challenged the notices issued under Sections 13(2) and 13(4) by filing a petition under Article 226 of the Constitution of India (the particulars of that petition have not been disclosed in the affidavit of the petitioner), which was dismissed on the ground of availability of alternative remedy under Section 17 of the Act. Thereafter, the petitioner filed an application under Section 17, which was registered as S.A.No.49 of 2006. He also filed I.A.No.311 of 2006 for restraining the bank from taking coercive steps to recover its dues. By an ex parte interim order dated 19-10-2006, the Tribunal stayed the

execution of notice issued under Section 13(4) of the Act subject to the condition that the petitioner shall deposit Rs.3,00,000/- with the bank on or before 13-11-2006.

In the counter filed on behalf the bank, it was urged that the ex parte interim order may be vacated because a sum of Rs.29,83,500/- was payable by the petitioner as on 1-3-2006.

After hearing the representatives of the parties, the Tribunal passed the impugned order and directed the petitioner to pay two instalments of Rs.2,50,000/- each.

The petitioner has questioned the legality of the above mentioned order by asserting that in exercise of the power vested in it under Section 17, the Tribunal cannot insist on payment of the specified amount as a condition for grant of stay. Another plea taken by the petitioner is that the condition imposed by the Tribunal for deposit of an additional amount of Rs.5,00,000/- is liable to be set aside because the same is wholly arbitrary, unreasonable and unduly onerous.

Sri V.V.S.N. Raju relied on the judgment of the Supreme Court in **Mardia Chemicals Ltd. v. Union of India**[1] and argued that the direction given by the Tribunal for deposit of two instalments of Rs.2,50,000/- each in addition to Rs.3,00,000/- already deposited pursuant to order dated 19-10-2006 should be quashed because the same does not have any legal sanctity. Learned counsel further argued that the Tribunal's power to grant stay stood exhausted on 19-10-2006 and, therefore, it could not have directed deposit of additional amount as a condition for continuing the interim order.

In our opinion, there is no merit in the arguments of the learned counsel and the writ petition is liable to be dismissed summarily. In **Mardia Chemicals Ltd. v. Union of India** (supra), the Supreme Court considered various facets of challenge to the provisions of Sections 13 and 17 of the Act. While negating the challenge to Section 13(2) (4) and (8), the Supreme Court observed as under:

> "The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that: (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled, (v) 75% of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not alone onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution."

From what has been extracted above, it is clear that the Supreme Court treated the requirement of deposit of 75% of the demand incorporated in Section 17(2) as onerous, oppressive and arbitrary. However, there is nothing in the plain language of Section 17 or the judgment of the Supreme Court from which it can be inferred that the Tribunal cannot insist on payment of a part of the amount due as a condition for staying the proceedings initiated by the secured creditor under Section 13 of the Act.

The record of this petition shows that as on the date of initiation of proceedings by the bank under Section 13 of the Act, a sum of Rs.23,83,520/- was due from the petitioner. On the date of issue of notice under Section 13(4), Rs.29,83,500/- was payable by the petitioner. Therefore, the direction given by the Tribunal to the petitioner to deposit two instalments of Rs.2,50,000/- each cannot be termed as arbitrary, unreasonable or unjustified. Rather, the impugned direction is most reasonable and equitable.

The argument of the learned counsel that the Tribunal's power to pass conditional order stood exhausted on 19-10-2006 is wholly meritless and is liable to be rejected. A reading of the provisions of the

Act including Section 17 makes it clear that there is no express provision under which the Tribunal can stay the proceedings initiated by the secured creditor under Section 13 of the Act. However, this power has to be read implicit in the scheme of Section 17, else the right given to the aggrieved person to question the measures taken by the secured creditor under Section 13(4) will become illusory. Once it is conceded that the Tribunal is empowered to pass an interim order, there is no reason to think that the Tribunal cannot pas conditional stay or amend, vary or modify the conditions imposed at a given time. Therefore, it cannot be said that by requiring the petitioner to deposit two instalments of Rs.2,50,000/- each, the Tribunal exceeded its jurisdiction.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.9036 of 2007 filed by the petitioner for interim relief is also dismissed.

**G.S.SINGHVI, C.J.**

9th April, 2007

**C.V.NAGARJUNA REDDY, J.**

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[1] (2004) 4 SCC 311